

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 42 OF 2016

SMT. JANKI RAGLO MALWANKAR AND 4
ORS.,

... Appellants

Versus

SHRI. LAXMAN J. MALWANKAR AND
ANR.,

... Respondents

Mr. S. G. Dessai, Senior Advocate with Anoop Atchut Gaoker,
Advocate for the appellants.

Coram:- F. M. REIS, J.

Date:- 22nd July, 2016

P.C.:

Heard Shri S. G. Dessai, learned Senior Counsel appearing for the appellants. The above appeal challenges a part of the Judgment passed by the learned Lower Appellate Court whereby the relief granted by the learned Trial Judge granting a declaration that the respondents have no right to the suit property, came to be unsettled.

2. Mr. S.G. Dessai, learned Senior Counsel appearing for the appellants points out that the appellants are also tenants of the property whose tenancy has been established and, as such, the learned Trial Judge has rightly decreed the suit filed by the appellants. The learned Senior Counsel further submits that the learned Lower Appellate Court has set aside the declaration on the

ground that a tenancy application is pending adjudication before the concerned Authority in respect of the subject-property. The learned Senior Counsel further points out that they have now realised that even the application relied upon by the respondents is in respect of a different property than the subject-property in the present appeal. The learned Senior Counsel further submits that once an injunction granted by the learned Trial Judge has been confirmed by the learned Lower Appellate Court, there was no reason to set aside the declaration granted by the learned Trial Judge when the respondents have failed to establish their alleged claim of tenancy over the suit property. The learned Senior Counsel, as such, submits that there are substantial questions of law which would call for interference of this Court.

3. I have considered the submissions of the learned Senior Counsel and I have also gone through the records. The learned Lower Appellate Court, on appreciation of the evidence on record, has confirmed the relief of permanent injunction granted by the learned Trial Judge. The only relief which has been refused is with regard to the declaration sought by the appellants which was granted by the learned Trial Judge. Defence to such relief by the respondents is that they are tenants of the suit property. Issue of tenancy claimed by the respondents has to be examined in appropriate forum under the Agricultural Tenancy Act. In such circumstances, in order to grant the relief sought by the appellants the defence of the

respondents cannot be foreclosed by an adjudication by the Civil Court in the present proceedings, when proceedings to that effect are, admittedly, pending and the appellants are also parties therein. In such circumstances, I find that there is no substantial question of law which calls for interference of this Court in the present appeal. Needless to say, the proceedings before the competent authority with regard to the claim of tenancy raised by the respondents would have to be examined on its own merits, in accordance with law.

5. Subject to the above, the appeal stands rejected.

F. M. REIS, J.

ssm.